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Subject:	EPIC Implementation Workshop
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Dear Rob—

It was nice to see you at the ARPA-E meeting a few weeks ago. I had hoped to make it to the EPIC hearing today, but ended up stuck at PARC with some senior staff meetings I couldn't skip. Still, I wanted to share our perspective on the EPIC program, with a goal of making the program more accessible to organizations in California. I'm also copying Eli Harland so that these can go into the official record.

Best Regards,

Scott

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Comments:

1) **Timing of proposal submission for DOE cost shares:** the current schedule calls for a full proposal (30 pages) to CEC for a 10% cost share, before the DOE full proposal (for 80%) is even due. This means that one has to do significant work for 10% of the value of a project that is still contingent on even being accepted by DOE. Given the considerable amount of work required to write the DOE proposal, it would be better to let organizations focus on that first, and only prepare an EPIC cost-share proposal afterwards. Here are some possible better solutions:
    a. Wait until the DOE decisions have been announced, and only then accept any EPIC cost share requests. Rely on the fact that DOE has done a good job vetting the proposals, and allow the EPIC cost-share submission to consist of the DOE proposal as written, plus a limited amount of additional material (1-2 pages) on the specific relevance to California **OR**
    b. Only require an abstract (focused on the specific impact for California) before the DOE proposals are due, and then use the DOE funding decisions, together with the EPIC abstract, to determine which cost-shares to award

2) **Terms and conditions—Indemnification & Liability:** The indemnifications clauses are

extremely broad, and unlimited in dollar amount. This is very problematic for most organizations. It would be much better if the indemnification were limited to liabilities arising during the actual project execution. Without such a limitation, one must consider very strange corner cases. One such corner case would be the following: Company X does an EPIC project and writes a report summarizing the technology. A 3rd party reads the report and uses its findings to build a device, but does so without any license from the CEC or the EPIC performer. Company X doesn't follow reasonable safety precautions, with the result that someone is killed. That 3rd party levels a frivolous lawsuit claiming that the State of California is negligent. Is the EPIC performer really asked to indemnify the State of California in this instance?

Because the language around indemnification is so broad, we have concluded that the only way for us to perform on EPIC contracts is to **very carefully** control the deliverables, and we would ask if this is the desired outcome:

a. ONLY have reports as deliverables that go to CEC (never any software, nor hardware)
b. Insure that reports are insufficient to teach others how to implement the technology

From the broad indemnification language, one could also conclude that if the CEC were sued because EPIC grants were considered a poor use of ratepayer money, an EPIC performer could be under the obligation to indemnify the State for this liability, even though the performer did nothing wrong. If that is not the intent, there needs to be more clear language defining the conditions under which the indemnification applies.

Another issue is that there is no cap on liability. It would be far easier to accept the EPIC terms if there was a cap related to the size of the funded projects. The cap could be, for example, 1X, 3X, 5X or even 10X the funded project amount, and that would be far better than no cap at all.

3) **Terms and conditions---Propagation of Licenses to other entities for the benefit of the IOU ratepayers:** For a commercial organization that is going to pay a cost share, it is imperative to have a downstream commercial scenario that makes sense. The CEC maintains a license that they can propagate to other entities for the benefit of IOU ratepayers. Without having a description of the types of conditions under which this might happen, a commercial entity needs to assume the worst case scenario, i.e. that they cannot derive any commercial benefit in California, since the CEC could undercut their business opportunity by providing licenses freely to competitors. This significantly undercuts the motivation to do a project with EPIC in the first place. It would be much better to explain, at least broadly, under what circumstances the CEC license would be propagated to other entities. For example, if a California company is actively working to commercialize an EPIC-funded technology and sell it at a fair market value in California, might the CEC still offer a license to competitors at a discount and undercut the business proposition of that EPIC funding recipient? Or is this provision in EPIC instead meant to be more like the "march in rights" under federal funding, i.e. to only be used if there is no viable commercial effort

proceeding that could provide the technology in California.

4) **Terms and conditions---Cost share funding.** It would appear that the CEC license rights are identical irrespective of whether CEC is funding an entire project, or a 10% cost share of a federal grant. It would seem reasonable that the rights accruing to CEC would be reduced if their funding is lower. While this is already true of the royalties, what about the CEC ability to propagate a license to other entities for the benefit of ratepayers. Those rights seem excessive if CEC is only covering 10% of a project cost.